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IN THE

Supreme Court of the United States

JAE LEE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR ASIAN AMERICANS ADVANCING JUSTICE | AAJC AND OTHER IMMIGRANTS' RIGHTS GROUPS AS AMICI CURIAE IN SUPPORT OF PETITIONER

CHEN-CHEN CECELIA CHANG
ASIAN AMERICANS ADVANCING JUSTICE | AAJC
1620 L STREET, NW
SUITE 1050
WASHINGTON, DC 20036

MARK C. FLEMING
Counsel of Record
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
mark.fleming@wilmerhale.com

ROBBIE MANHAS
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006

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BRIEF FOR ASIAN AMERICANS ADVANCING JUSTICE | AAJC AND OTHER IMMIGRANTS' RIGHTS GROUPS AS AMICI CURIAE IN SUPPORT OF PETITIONER

INTEREST OF AMICI CURIAE[1]

Amici are 46 national and local non-profit organizations that promote equality, justice, and civil rights for immigrants.

Asian Americans Advancing Justice | AAJC (AAJC) is a national nonprofit organization founded in 1991. Based in Washington, D.C., AAJC works to ad-

[1] No counsel for a party authored this brief in whole or in part. No person other than amici or their counsel made a monetary contribution to this brief's preparation or submission. Letters from the parties consenting to the filing of this brief are on file with the Clerk.

vance and protect civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. AAJC is one of the nation's leading experts on issues of importance to the Asian American community, including immigration and immigrants' rights. Along with its affiliates, AAJC works to promote justice and bring national and local constituencies together through community outreach, advocacy, and litigation.

Description of the additional 45 amici are included in the appendix to this brief. These amici are organizations that, like AAJC, work with immigrant communities that are affected by the issues in this case.

This case addresses an issue of great importance to amici and the immigrant communities on whose behalf amici advocate: the extent to which the significant harms that deportation visits upon deportees and their families are given weight in the prejudice analysis under *Strickland* v. *Washington*, 466 U.S. 668 (1984). Under current immigration statutes, families face a unique and devastating threat if any noncitizen family member gets caught up in the criminal justice system. Amici submit this brief to explain why, even where evidence of guilt is allegedly strong, the singular harms of deportation can support a finding of prejudice with regard to a noncitizen defendant's acceptance of a deportation-enabling plea deal that was premised on defective advice of counsel about the conviction's immigration consequences. The brief seeks to inform the Court of the effects of deportation and examples of those who, because of uninformed pleas to deportable offenses, have faced the prospect of deportation when it would have been strongly in their interest to refuse to plead.

SUMMARY OF ARGUMENT

As this Court has repeatedly recognized, deportation is a severe penalty that is often the most important aspect of a noncitizen's criminal conviction. It can uproot lives and rip families apart, and it can leave deportees marooned in a land they do not call their home, in which many—for reasons such as inadequate language or job skills, discrimination, and lack of contacts and familiarity with local culture—struggle to assimilate and establish a livelihood.

The consequences of this upheaval are profound. Numerous studies show that deportation visits significant emotional and financial harms on deportees and their families. For example, deportees routinely suffer from depression and post-traumatic stress disorder. And because they often possess job skills ill-suited to a foreign economy and suffer discrimination as outsiders, they can have trouble supporting themselves abroad. Meanwhile, family members left behind in the United States often lose their household's primary breadwinner. Consequences like these are naturally at the forefront of the minds of noncitizen criminal defendants who are properly advised of the deportation risk posed by the charges they face.

Unsurprisingly, then, noncitizen criminal defendants with close ties to the United States have an overriding interest in avoiding deportation, even if that means rejecting plea deals that minimize sentences, and even when the evidence of guilt may be strong. Many who have accepted deportation-enabling plea deals on deficient advice of counsel regarding the conviction's immigration consequences would have rejected those plea deals if properly counseled—and understandably so. That satisfies *Strickland*'s prejudice in-

quiry as it applies in this context: that, but for the defective assistance of counsel, the defendant would have rationally rejected the plea deal that was accepted. When everything most important in one's life rides on remaining in this country, it is rational—and likely—that one would reject a plea deal that triggers mandatory deportation.

It is true that, where the prosecution's evidence is strong, deportation may be the likely ultimate outcome in any event. But a rational decision-maker bases decisions on both risk *and* result. And for the noncitizen defendants at issue, automatically subjecting themselves to mandatory deportation is unacceptable, and certainly far less attractive than the *chance*—however slim—of a favorable outcome that would allow them to remain in this country. As illustrated by the real-world accounts in Part C of this brief, it is therefore eminently rational for such defendants to make the considered choice to reject plea deals that enable deportation.

ARGUMENT

BECAUSE OF THE SINGULAR HARMS PRODUCED BY DEPORTATION, A NONCITIZEN CRIMINAL DEFENDANT COULD RATIONALLY REJECT A DEPORTATION-ENABLING PLEA DEAL EVEN WHEN THE PROSECUTION HAS A STRONG CASE

A. Deportation Is A Severe Penalty That Can Devastate Lives And Families

This Court has "long recognized that deportation is a particularly severe 'penalty.'" *Padilla* v. *Kentucky*, 559 U.S. 356, 365 (2010) (quoting *Fong Yue Ting* v. *United States*, 149 U.S. 698, 740 (1893)). Indeed, this "'drastic measure'" is "an integral part—... sometimes the most important part—of the penalty that may be

imposed on noncitizen defendants who plead guilty to specific crimes." *Id.* at 360, 364 (footnote omitted).

Deportation's severity lies in its complete upending of the course of a life: By "'[u]prooting the alien from home, friends, family, and work,'" it "'has a far harsher impact on most resident aliens than many conceded 'punishment[s].'" *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 498 (1999) (Ginsburg, J., concurring) (quoting Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* 162 (1996)); *see, e.g.*, *Bridges* v. *Wixon*, 326 U.S. 135, 154 (1945) ("[Deportation] visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom.").

A number of noncitizens who face deportation have never visited the country to which they would be deported, have no family there, and do not speak the relevant language. *See, e.g.*, Leitner Center, *Removing Refugees: U.S. Deportation Policy and the Cambodian-American Community* 14 (Spring 2010) (deportees to Cambodia) (*Leitner Report*); *Independent Lens: Sentenced Home* (PBS television broadcast May 15, 2007) 25:33-26:00 (Bill Herod, coordinator at the Returnee Assistance Project in Cambodia: deportees are "not Cambodians" but "Americans ... by experience, education, [and] language"); Imison, *The Americans Deported to a Country They Don't Know: "I Didn't Know the City or the Language,"* The Independent (Oct. 27, 2013) (Mexican deportee explaining "the day she arrived in Mexico": "'I was in shock .... I didn't know [Tijuana]; I'd forgotten most of the Spanish I learnt as a little girl. It was like being dropped in a foreign country.'"); *see also infra* Part C. The culture is foreign and assimilation is extraordinarily difficult. *See, e.g.*, *Leitner Report* 13-14, 17 (describing discrimination against deportees to Cambo-

dia, how deportees respond to "the shock of arrival," and how deportees "typically lack marketable skill sets" given Cambodia's agriculture-based economy); Lonegan, *American Diaspora: The Deportation of Lawful Residents from the United States and the Destruction of Their Families*, 32 N.Y.U. Rev. L. & Soc. Change 55, 73 (2007) ("Deportees are the object of intense scorn throughout the Caribbean, where government officials have blamed them for an increase in crime."). The upheaval leaves many struggling with depression and post-traumatic stress disorder. Lonegan, 32 N.Y.U. Rev. L. & Soc. Change at 72 ("A 2004 study ... which surveyed deportees, family members, and 'parties connected to detainees/family members' found that 70% of respondents showed symptoms of post traumatic stress disorder."); *Leitner Report* 13-14 (also discussing drug and alcohol abuse and suicides among deportees). Making ends meet is often a challenge due to discrimination and other barriers. *Leitner Report* 17 (deportees to Cambodia often lack marketable skills and are discriminated against in the job market); *Independent Lens: Sentenced Home* 55:18-55:51, 56:55-57:12 (expanded YouTube video of PBS television broadcast May 15, 2007) (Cambodian deportee Louen Lun describing how he does not have the job skills or experience to find work in Cambodia).

For many individuals, however, deportation's most significant impact is the rending apart of their families.[2] Based on data provided by the Department of Home-

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[2] In other contexts, this Court has recognized the overwhelming importance of family ties, and many legal rules are designed to honor and protect family integrity as a core American value. *See, e.g.*, *Moore* v. *City of E. Cleveland*, 431 U.S. 494, 503 (1977) ("Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition.").

land Security, Human Rights Watch estimates that, from 1997 to 2007, "at least 1.6 million family members, including husbands, wives, sons and daughters, [were] separated from loved ones by deportations" from the United States. *Forced Apart: Families Separated and Immigrants Harmed by United States Deportation Policy* 44 (July 2007). From that same data and for the same time period, it has been estimated that "more than 100,000 children have been affected by [lawful permanent resident] parental deportation." Baum et al., *In the Child's Best Interest? The Consequences of Losing a Lawful Immigrant Parent to Deportation* 4, 13 (Mar. 2010) (*Baum Report*); *see* Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families* v (Sept. 2015) (estimating that, between 2009 and 2013, "as many as half a million parents may have been deported, affecting a similar number of US-citizen children") (*Capps Report*).

Deportation's effects on a family's psychological and economic health can be profound. Many studies show that "children separated from parents as a result of detention and deportation" experience "psychological trauma, material hardship, residential instability, family dissolution, increased use of public benefits, and, among boys, aggression." *Capps Report* vi ("More than 90 percent of those detained and deported are men, and families usually lose a breadwinner when the father is deported."); *see Baum Report* 5-9; *Leitner Report* 14-16, 17-18; Lonegan, 32 N.Y.U. Rev. L. & Soc. Change at 71; Koball et al., *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents* vi (Sept. 2015) (*Koball Report*). "[M]any of the spouses and partners of detained parents reported suf-

fering from depression and social isolation following the detention." *Koball Report* vii.

A noncitizen facing deportation is typically keenly aware of the devastation that removal would cause his or her family. *E.g.*, *Yau* v. *United States*, 2012 WL 245201, at *4 (N.D. Ill. Jan. 26, 2012) (defendant arguing that, "'had [he] know[n] that deportation could be a possible consequence'" of his plea deal, "'[he] would have fought [his] case to prevent this tragedy from happening'" because "the 'time of imprisonment cannot outweigh the seriousness and the potential damage of what deportation can cause to myself and my family'"); *Leitner Report* 6 (during removal hearing, deportee "spoke passionately about the family he would leave behind" and, "[w]hen informed that he would return to Cambodia, ... said '[y]ou might as well kill me here'"); *see also* *INS* v. *St. Cyr*, 533 U.S. 289, 322 (2001) ("There can be little doubt that, as a general matter, alien defendants considering whether to enter into a plea agreement are acutely aware of the immigration consequences of their convictions."). That awareness fuels the desire of many noncitizens to avoid deportation at all costs.

B. Where An Accepted Plea Deal Is At Issue, The *Strickland* Prejudice Inquiry Does Not Require That The Defendant Would Have Gone To, Or Prevailed At, Trial

Where ineffective assistance revolves around an accepted plea deal, the question of *Strickland* prejudice is not limited to whether the defendant would ultimately succeed at trial. Although that inquiry is relevant, this Court's precedents make clear that, as a general matter, the defendant need only "show [that] the outcome *of the plea process* would have been different with competent advice," *Lafler* v. *Cooper*, 132 S. Ct. 1376,

1384 (2012) (emphasis added), and that "a decision to reject the plea bargain would have been rational under the circumstances," *Padilla*, 559 U.S. at 372. *See Strickland* v. *Washington*, 466 U.S. 668, 691-692 (1984) (prejudice evaluated based on the "effect on *the judgment*" and the "outcome of the proceeding" generally (emphasis added)).

Nor is it proper to base a narrower prejudice inquiry on this Court's statement in *Hill* v. *Lockhart*, 474 U.S. 52 (1985), that "the defendant must show ... a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59. That showing is required only when the defendant's specific theory of prejudice is that "ineffective assistance led him to accept a plea offer *as opposed to proceeding to trial*." *Missouri* v. *Frye*, 132 S. Ct. 1399, 1409 (2012) (emphasis added); *see id.* at 1409-1410 ("*Hill* ... applies in the context in which it arose. *Hill* does not ... provide the sole means for demonstrating prejudice arising from the deficient performance of counsel during plea negotiations.").[3]

To read *Hill* otherwise would be to ignore the reality that, "[i]n today's criminal justice system, ... the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." *Frye*, 132 S. Ct. at 1407. And that reality is important here because there are a number of ways in

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[3] Indeed, in making its statement, the Court in *Hill* cited approvingly (474 U.S. at 59 n.**) cases framing the prejudice inquiry not in terms of whether the defendant would have opted for trial, but in terms of whether "'the result of the plea proceedings'" more generally "'would have been different.'" *United States* v. *Gavilan*, 761 F.2d 226, 228-229 (5th Cir. 1985) (asking whether defendant "would have pleaded differently"); *see also Thomas* v. *Lockhart*, 738 F.2d 304, 307 (8th Cir. 1984) (similar).

which a noncitizen criminal defendant, properly informed of the deportation consequences of a plea deal, might negotiate with the prosecution to secure more favorable terms—including a plea to a nondeportable offense. Pet. Br. 19-24; *see also* Am. Immigration Lawyers Ass'n Br. 21-22, *Chaidez* v. *United States*, No. 11-820 (U.S. July 23, 2012), 2012 WL 3041307 (describing experience of Andy Song, who was able to negotiate a new plea deal that avoided deportation consequences after his earlier deportation-enabling plea deal was voided on the basis of ineffective assistance of counsel); New York City Bar, *The Immigration Consequences of Deferred Adjudication Programs in New York City* 7-9 (June 2007) (multi-jurisdiction survey of pre-plea diversion programs that serve as "meaningful alternatives to *both* incarceration *and* deportation").

C. It May Be Eminently Rational For A Properly Informed Defendant To Reject A Deportation-Enabling Plea Deal

In light of the frequently drastic consequences of deportation for a long-time resident of this country, it is reasonable for certain defendants to reject a deportation-enabling plea deal. Focusing instead on only the strength of the evidence of guilt ignores a fundamental feature of any rational risk-reward calculus: the magnitude of the reward should the risk pay off. Where a noncitizen defendant faces certain deportation under a plea deal, and the harms of deportation are sufficiently dire, he or she can rationally—and will likely—choose to reject that deal even if the risk of doing so is high, given that the potential reward (acquittal or conviction of a lesser, non-deportable offense) is of immense value. *State* v. *Nkiam*, 778 S.E.2d 863, 873-874 (N.C. Ct. App. 2015) (adopting this view and collecting cases); *see also*

DeBartolo v. *United States*, 790 F.3d 775, 778 (7th Cir. 2015) ("DeBartolo unquestionably wants to roll the dice, which is strong evidence that he also would have chosen to roll the dice four years ago had he known about the deportation threat. He faces the same risk of conviction and a long sentence now that he did then.").

The examples below illustrate why. The individuals described, because of their strong ties to this country, exemplify the set of deportees for whom "'preserving the ... right to remain in the United States [is] more important'" than anything else, even the risk of a longer term of incarceration. *Padilla*, 559 U.S. at 368.

1. **Jose Padilla**

One vivid example of the rationality of rejecting a plea to a deportable offense, notwithstanding strong evidence of guilt, comes from this Court's own decision in *Padilla*. Jose Padilla, a native of Honduras, has been a lawful permanent resident of the United States for over 40 years and served with honor during the Vietnam War. *Padilla*, 559 U.S. at 359. "He resides in California with his wife, three disabled children and elderly mother-in-law. He has three adult children, one with his current wife, and two by a previous marriage. Since his arrival in the United States, he has spent only two weeks in Honduras." *Padilla* v. *Commonwealth*, 381 S.W.3d 322, 324 (Ky. Ct. App. 2012) (*Padilla II*).

In 2001, while working as a self-employed truck driver, Padilla was stopped by a police officer who "noticed that Padilla did not have a KYU number[,] appeared nervous[,] ... [and] was 'off route.'" *Padilla II*, 381 S.W.3d at 327. "During a consensual search of the truck cab, ... a box fell and tore." *Id.* "The police contend that the box revealed only a white styrofoam inner

package while Padilla contends that drugs were plainly visible. According to Padilla, after the drugs were visible, he was asked what was in the load and responded 'maybe, drugs.' The police contend that the question was asked and answered before the drugs were visible." *Id.* "It is undisputed that the search of the truck revealed a substantial quantity of marijuana." *Id.* Padilla claimed that he did not know about the marijuana because "[h]e had no right to inspect the load's contents and checked only for its quantity and weight." *Id.*

After his arrest, "Padilla pleaded guilty to various marijuana-related charges, including trafficking in more than five pounds of marijuana"—a deportable offense. *Padilla II*, 381 S.W.3d at 324. His counsel provided erroneous advice on the immigration consequences of the trafficking offense, however, and thus Padilla did not know when he made the plea that the offense was deportable. *Id.* at 324, 327; *see also Padilla*, 559 U.S. at 359-360. While serving his prison sentence, he brought an ineffective-assistance claim based on his counsel's misadvice. Padilla's claim eventually reached this Court, which held that the claim satisfied *Strickland*'s performance prong. *Padilla*, 559 U.S. at 369.

On remand, the trial court ruled against Padilla on the prejudice inquiry. *Padilla II*, 381 S.W.3d at 328. It did so because it deemed the evidence of guilt to be strong, which led it to conclude that "'[a] rational defendant would not have risked a [greater] sentence ... by insisting on going to trial in this case'" in light of "'the overwhelming likelihood of conviction.'" *Id.*

The Kentucky Court of Appeals agreed that the evidence of guilt was strong, but found prejudice because of the drastic consequences deportation would have for Padilla and his family. *Padilla II*, 381 S.W.3d at 328-

330; *see id.* at 329 ("Necessarily, the court must consider the importance a particular defendant places upon preserving his or her right to remain in this country."). It noted that, "for Padilla, exile is a far wors[e] prospect than the maximum ten year sentence." *Id.* at 330. It credited his testimony that pleading guilty and facing certain deportation was essentially 'putting a gun' to his head and [that], if he had known of the deportation consequences, he would have insisted on going to trial." *Id.* It also found persuasive the testimony of "Padilla's wife and daughter[,] [who] confirmed that Padilla's banishment from this country was a death sentence for their life as a family." *Id.*

That decision was correct. It gave proper weight to this Court's recognition that, "for a noncitizen defendant and, particularly a legal permanent resident facing deportation, the 'stakes are ... high and momentous,'" "'equivalent of banishment or exile,'" and thus, in many instances, prejudice exists even in the face of strong evidence of guilt, as "'preserving the ... right to remain in the United States '[is] more important to the [defendant] than any jail sentence.'" *Padilla II*, 381 S.W.3d at 329 (first ellipsis and second brackets in original) (quoting *Padilla*, 559 U.S. at 368; *Delgadillo* v. *Carmichael*, 332 U.S. 388, 391 (1947)). This Court should confirm this reality-driven understanding of a noncitizen's preferences—which gives due weight to the severity of deportation, *supra* Part A—in the context of *Strickland* prejudice.

2. Elan DeJesus

Elan DeJesus was born in the Dominican Republic in 1983 and moved to the United States with his family at the age of eleven. *Commonwealth* v. *DeJesus*, 9 N.E.3d 789, 792 (Mass. 2014). He has lived in Boston

ever since. *Id.* "All of ... [his] family members reside in the United States," including, at the time of his guilty plea, a wife and daughter (his wife later became pregnant). *Id.* He "attended Boston public schools and graduated from Boston English High School," after which he "maintained steady employment with a parcel shipping company." *Id.* "[A]t the time of his arrest, he had been employed for eight years loading boxes onto trucks." *Id.* The arrest was his first. *Id.*

The arrest occurred after police officers stopped a van that DeJesus was driving. *DeJesus*, 9 N.E.3d at 792. The sole passenger had an outstanding warrant and was arrested. *Id.* DeJesus "agreed to accompany the officers to the police station, where police searched him, reach[ed] into his groin area and recover[ed] a small bag containing white powder." *Id.* He "was then placed under arrest and ultimately indicted for trafficking in cocaine, twenty-eight grams or more, an offense that at that time carried a five-year mandatory minimum sentence of incarceration in State prison." *Id.*

DeJesus's lawyer told him "that any guilty plea would make him 'eligible for deportation.'" *DeJesus*, 9 N.E.3d 792. On the day of the plea hearing, however, his lawyer "was unavailable ... , and [DeJesus] appeared in court with an attorney who worked in [his lawyer]'s office; substitute counsel did not discuss with [DeJesus] the immigration consequences of his plea." *Id.* DeJesus "pleaded guilty to the lesser included offense of possession of cocaine with intent to distribute and was sentenced to two and one-half years' probation." *Id.* at 792-793.

"[W]hile [he was] on probation, [DeJesus] was arrested for driving with a suspended license. Following his arrest, the defendant was taken into the custody of

Federal immigration authorities, placed in removal proceedings, and ordered to be removed from the United States." *DeJesus*, 9 N.E.3d at 793. While "awaiting removal ... , he filed [a] motion for a new trial seeking to withdraw his guilty plea" on the basis that his lawyer had been ineffective in failing to warn that he would be subject to mandatory deportation as a result of his plea. *Id.* He argued that the consequences were severe: He had "'been living in the United States since he was a child and all his family and friends live here,'" and that "'[r]emaining in the United States [was] more important to him than any jail sentence he could have received under [the] charges.'" *Id.*

Both the trial court and the Supreme Judicial Court of Massachusetts ruled in DeJesus's favor. *DeJesus*, 9 N.E.3d 793-798. Regarding prejudice, the Supreme Judicial Court held that "the findings establish the presence of 'special circumstances' showing that the defendant 'placed, or would have placed, particular emphasis on immigration consequences in deciding whether to plead guilty.'" *Id.* at 797. It relied in particular on findings that DeJesus "was 'very concerned' ... about the risk of deportation, and that [he] 'had a lot to lose if he were to be deported' because he had been in the country since he was eleven years old, his family was in Boston, and he had maintained steady employment in the Boston area." *Id.* And it "reject[ed] the Commonwealth's argument ... that the defendant was not prejudiced notwithstanding these circumstances because he 'got a very good deal'" (in that "he received straight probation when he was facing a mandatory minimum sentence of five years of incarceration"). *Id.* Instead, it stressed that "an assessment of the apparent benefits of a plea offer ... must be conducted in light of the recognition that a noncitizen defendant confronts a very different calculus than that

confronting a ... citizen": "For a noncitizen defendant, preserving his 'right to remain in the United States may be more important ... than any jail sentence.'" *Id.* (quoting *Padilla*, 559 U.S. at 368).

This analysis accords with this Court's decisions. And it adopts the perspective of a rational defendant by considering both the risks *and* the results. *People* v. *Picca*, 947 N.Y.S.2d 120, 129 (App. Div. 2012) ("[t]he determination of whether to plead guilty is a calculus, which takes into account all of the relevant circumstances," and thus neither "seemingly strong evidence" nor a plea bargain favorable from a noncitizen's perspective "necessarily requires a finding that the defendant was not prejudiced by ... counsel's failure to advise" regarding "the removal consequences of [a] plea"). Where immigration consequences are dire, noncitizen defendants like DeJesus might rationally risk higher sentences rather than automatically subject themselves to mandatory deportation.

3. Lundy Khoy[4]

Lundy Khoy immigrated to the United States at the age of one. She was born in a refugee camp in Thailand; her parents were fleeing the Khmer Rouge genocide in Cambodia. She and her parents are lawful permanent residents, and her brother and sister, who were born in the United States, are citizens.

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[4] Khoy has provided a signed letter attesting to the account in this brief. The letter is on file with counsel for amici and is available at the Court's request. Her experience has also been reported by major news outlets. *E.g.*, Bahrampour, *After Run-In with Law, Cambodian Immigrant's Permanent Residency Is at Risk*, Wash. Post, Oct. 3, 2012.

In 2000, while a freshman at George Mason University, Khoy's then-boyfriend gave her some ecstasy pills. By the next day, she was arrested. After the arresting officer found seven pills on Khoy's person, Khoy—afraid of upsetting her parents by admitting that she was using ecstasy herself—falsely told the officer that she intended to sell the pills to friends. She was charged with possession with intent to distribute and pleaded guilty on the advice of counsel, who knew Khoy was a noncitizen but did not inform her of the potential immigration consequences. The judge ultimately sentenced Khoy to three months in jail and four years of probation, acknowledging that she was not a drug dealer, just someone who was "'young and dumb'" who had made "'a big mistake.'" Calma, *Forty Years After Resettlement, Thousands of Southeast Asian Refugees Face Deportation*, NBC News (Nov. 23, 2015 8:56 a.m.).

Almost four years later, as Khoy was continuing college and her probation was nearing its end, immigration authorities detained her during a visit to her parole officer. She ended up spending nine months in immigration detention, after which she was released because, notwithstanding her removal order, Cambodia would not issue her travel documents. Since then, Khoy has received a simple pardon—mentioning her "commitment to good citizenship"—from the Governor of Virginia. Because the pardon has not erased Khoy's criminal record, however, she can still be deported. *See* Southeast Asia Res. Action Ctr., *Lundy Khoy Receives Governor's Pardon in Virginia* (May 13, 2016).

Had Khoy had been informed of the deportation consequences of her plea, she would have explored other options, including going to trial, notwithstanding arguably strong evidence against her (her own misguided

confession). That decision would have been rational. Khoy considers America her home. She has never been to Cambodia. She knows no one there. She does not read or write Khmer. Her parents barely speak English and rely on her to translate for them and take care of daily tasks. Although Khoy would have faced an uphill battle at trial, it would not have been irrational to take that risk or pursue other options (such as a plea to a different, non-deportable offense) when the consequence of pleading guilty—mandatory deportation—was certain.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

CHEN-CHEN CECELIA CHANG
ASIAN AMERICANS ADVANCING JUSTICE | AAJC
1620 L STREET, NW
SUITE 1050
WASHINGTON, DC 20036

MARK C. FLEMING
Counsel of Record
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
mark.fleming@wilmerhale.com

ROBBIE MANHAS
WILMER CUTLER PICKERING HALE AND DORR LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006

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APPENDIX

APPENDIX

LIST OF ADDITIONAL AMICI CURIAE

The American-Arab Anti-Discrimination Committee (ADC) is the country's largest Arab American civil rights organization, with members from all 50 states and multiple chapters nationwide. Founded in 1980 by U.S. Senator James Abourezk, ADC is a non-partisan and secular non-profit grassroots organization. ADC has been at the forefront of protecting the Arab-American community for over thirty-five years against discrimination, racism, and stereotyping.

America's Voice Education Fund (AVEF) is a national 501(c)(3) organization that seeks to harness the power of American voices and American values to enact policy change that guarantees full labor, civil, and political rights for immigrants and their families. It works in partnership with progressive, faith-based, labor, civil rights, and grassroots groups, networks, and leaders, as well as a large number of online activists that includes both immigrants and native-born citizens.

Asian American Bar Association of San Francisco Bay Area (AABA) is one of the largest Asian American bar associations in the nation and one of the largest minority bar associations in the State of California. From its inception in 1976, AABA and its attorneys have been actively involved in civil rights issues and community service. AABA joins this amicus brief because AABA believes non-citizen defendants and their families are entitled to a remedy for mistaken pleas that accounts for harms of deportation in all cases. Indeed, U.S. immigration policy has long recognized the importance of family unity, and AABA believes that the same legal principle should apply in assessing whether

defendants are prejudiced by mistaken pleas that permanently separate them from family members.

Asian American Community Services (AACS) is a community-based organization in Central Ohio that seeks to improve the well-being and quality of life of Asian/Pacific Islanders through a broad range of social services, education, and community outreach. Every day, AACS works to address the various social, linguistic, cultural, and other barriers faced by our clients, who consist largely of immigrants and children and grandchildren of immigrants. AACS understands the critical need to ensure that the civil rights of all immigrants are respected.

Asian Americans Advancing Justice – Atlanta (formerly Asian American Legal Advocacy Center or AALAC) is the first non-profit law center dedicated to Asian immigrants and refugees (Asian Americans) in the Southeast. Its goal is to engage, educate and empower underrepresented Asian Americans and increase their civic participation. It is one of five independent organizations that make up the national Asian Americans Advancing Justice.

Asian Americans Advancing Justice – Los Angeles (Advancing Justice – LA) is the nation's largest legal and civil rights organization for Asian Americans, Native Hawaiians, and Pacific Islanders (NHPI). Founded in 1983 as the Asian Pacific American Legal Center, Advancing Justice – LA serves more than 15,000 individuals and organizations every year. Through direct services, impact litigation, policy advocacy, leadership development, and capacity building, Advancing Justice – LA focuses on the most vulnerable members of Asian American and NHPI communities while also building a strong voice for civil rights and social justice. Advanc-

ing Justice – LA provides assistance in several areas of law, including immigration relief and deportation defense.

The Asian Pacific American Bar Association of Pennsylvania (APABA-PA), formerly the Asian American Bar Association of the Delaware Valley, is a non-profit organization founded in 1984 to serve a wide network of Asian Pacific American attorneys. APABA-PA is dedicated to the professional, economic, social and educational advancement of Asian Pacific American lawyers and to promote the administration of justice for the Asian Pacific American community. The APABA-PA also educates its members and the community about issues critical to Asian Pacific Americans.

Asian Pacific American Labor Alliance, AFL-CIO (APALA) is the first and only national organization of AAPI union members and allies to advance worker, immigrant, and civil rights. Backed by the AFL-CIO, APALA has 18 chapters and a national office in Washington, D.C. Since its founding in 1992, APALA has played a unique role in serving as the bridge between the broader labor movement and the AAPI community.

The Center for Constitutional Rights (CCR) is a national non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international human rights law. Founded in 1966, CCR has a long history of litigating cases on behalf of those with the fewest protections and least access to legal resources, including numerous landmark civil and human rights cases fighting for racial and immigrant justice and protection from indefinite detention and solitary confinement. CCR regularly works with immigrant communities who face distinct vulnerabilities at the in-

tersection of the criminal justice system and immigration and has brought numerous cases in this Court to ensure that non-citizens are afforded the protections established under the Constitution, including *Ziglar* v. *Abbasi*, *cert. granted*, No. 15-1359, 2016 U.S. LEXIS 6272 (Oct. 11, 2016) (decision pending) (challenging abusive conditions of immigration detention, including deprivation of non-citizens' access to counsel); *Rasul* v. *Bush*, 542 U.S. 466 (2004) (establishing federal court jurisdiction to hear non-citizens' habeas challenges to indefinite detention); and *Boumediene* v. *Bush*, 553 U.S. 723 (2008) (confirming constitutional right of non-citizen detainees to petition for habeas review).

Chinese American Citizens Alliance (C.A.C.A.), founded in 1895 with headquarters in San Francisco, is the oldest Asian American civil rights organization in the United States. C.A.C.A. has fought and advocated for the civil rights and equitable treatment of Chinese and Asian Americans for over 120 years. This case highlights the fact that the United States should and must provide and exhaust all available avenues of competent legal and judicial opportunities afforded in the Constitution to its citizens and legal residents.

Chinese American Citizens Alliance Portland Lodge (C.A.C.A. Portland), located in Portland, Oregon, is a chapter of the national C.A.C.A.

Chinese for Affirmative Action (CAA) has served immigrant communities for over 47 years, supporting immigrant community members with direct services and advocating alongside them for broader and more inclusive policy changes to our current immigration system. For the last 10 years, CAA has been part of a local network to ensure that all immigrants regardless of immigration status, income status, language ability,

or country of origin have access to trusted community based immigrant legal services. CAA advocates for not only universal representation for immigrants in deportation proceedings but also immigration representation and access to immigration counsel in criminal proceedings. As the United States continues to move toward entangling our immigration and criminal justice systems, CAA and other advocates must work to ensure that community members are well informed of the immigration consequences of their criminal proceedings to avoid situations where they face a double sentence—one through the criminal justice system and the second through the immigration system.

Council of Korean Americans (CKA) is a global network of Korean Americans dedicated to advancing issues of national importance for our community. CKA supports immigrants' rights and recognizes their contributions to society. This case underscores the harsh reality that families can be torn apart for relatively minor offenses under current immigration laws. At a time when immigrant rights are under attack, it is imperative that organizations like CKA stand up for members of its community.

Detention Watch Network (DWN) is a national coalition of organizations and individuals working to expose and challenge the injustices of the United States' immigration detention and deportation system and advocate for profound change that promotes the rights and dignity of all persons.

The Filipino Bar Association of Northern California (FBANC) is one of the oldest Filipino-American bar associations in the nation with a mission to advance equality and guard against injustices targeting not only the Filipino community, but the rights of all minority

communities. As an organization comprised of Filipino-American attorneys, judges, law professors, law students, and allies, FBANC stands in solidarity to advocate and serve immigrant families and communities.

The Fred T. Korematsu Center for Law and Equality (Korematsu Center) is a non-profit organization based at Seattle University School of Law and works to advance justice through research, advocacy, and education. The Korematsu Center is dedicated to advancing the legacy of Fred Korematsu, who defied the military orders during World War II that ultimately led to the internment of 110,000 Japanese Americans. He took his challenge of the military orders to the United States Supreme Court, which upheld his conviction in 1944 on the ground that the removal of Japanese Americans was justified by "military necessity." Fred Korematsu went on to successfully challenge his conviction and to champion the cause of civil liberties and civil rights for all people. The Korematsu Center, inspired by his example, works to advance his legacy by promoting social justice for all. It has a special interest in promoting fairness in the courts of our country. That interest includes ensuring effective assistance of counsel, especially when legal advice is given that has consequences relating to the detention or removal of individuals, many of whom have extensive ties to the United States. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

The Hispanic National Bar Association (HNBA) is comprised of thousands of Latino lawyers, law professors, law students, legal professionals, state and federal judges, legislators, and bar affiliates across the country. The HNBA supports Hispanic legal professionals and is committed to advocacy on issues of importance to the 53 million people of Hispanic heritage living in the

United States. The HNBA regularly petitions Congress and the Executive on behalf of all members of the communities it represents.

The Illinois Coalition for Immigrant and Refugee Rights (ICIRR) is a non-profit, nonpartisan statewide organization dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. In partnership with its member organizations, ICIRR educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and, informs the general public about the contributions of immigrants and refugees. ICIRR has advocated for policy changes that protect immigrant families from deportation and separation and uphold their rights to due process and equal protection under the law.

The Japanese American Citizens League (JACL), founded in 1929, is a national organization whose mission is to secure and safeguard the civil and human rights of Asian/Pacific Islander communities who are affected by injustice and bigotry. The unique historical experience of Japanese American incarceration during World War II obligates the Japanese American community to address civil and human rights issues. During World War II, the experience of Japanese Americans went beyond being forced from their homes and being detained without due process. Japanese Americans were vilified and targeted because of their race. The United States abandoned them, with some being subjected to deportation. Their abandonment by the United States government left many with a mental trauma that for some would last a lifetime.

LatinoJustice PRLDEF is a national not for profit civil rights legal defense fund that has advocated for and defended the constitutional rights of all Latinos under the law. Its continuing mission since being founded in 1972 is to promote the civic participation of the greater pan-Latino community, to cultivate new Latino community leaders, and to engage in and support law reform cases addressing basic civil rights impacting Latinos, particularly in the intersection of criminal justice and immigrants' rights. It has brought several precedent-setting law reform cases protecting immigrants' rights to ensure (1) that Latinos and other immigrants receive the legal protections they are afforded under the Constitution and (2) that immigrants are treated with the same human dignity as any other resident of this country.

The Leadership Conference on Civil and Human Rights (The Leadership Conference) is a coalition of more than 200 organizations committed to the protection of civil and human rights in the United States. It is the nation's oldest, largest, and most diverse civil and human rights coalition. It was founded in 1950 by three legendary leaders of the civil rights movement—A. Philip Randolph of the Brotherhood of Sleeping Car Porters; Roy Wilkins of the NAACP; and Arnold Aronson of the National Jewish Community Relations Advisory Council. The Leadership Conference believes that the due process rights of all people in the United States, including the right to effective assistance of counsel, must be vigorously protected.

The National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors, and law students, representing the interests of nearly 75 state and local Asian Pacific American bar associations

and nearly 50,000 attorneys who work in solo practices, large firms, corporations, legal services organizations, nonprofit organizations, law schools, and government agencies. Since its inception in 1988, NAPABA has served as the national voice for Asian Pacific Americans in the legal profession, and has promoted justice, equity, and opportunity for Asian Pacific Americans. NAPABA advocates for the rights of immigrants and a fair and function court system, including clarifying the appropriate duties of counsel.

The National Asian Pacific American Women's Forum (NAPAWF) is the only national, multi-issue Asian and Pacific Islander (AAPI) organization for women, transgender, and gender non-conforming people in the country. NAPAWF's mission is to build a movement to advance social justice and human rights for AAPI communities. It advocates for gender and racial justice for AAPI immigrants, who are particularly vulnerable to harm within the immigration and justice systems because of discrimination, economic status, limited education and resources, and high rates of limited English proficiency.

The National Bar Association (NBA) is the nation's oldest and largest national network of predominantly African-American attorneys and judges in the United States. The NBA was founded in 1925, when there were only 1,000 African-American attorneys in the entire country and when other national bar associations, such as the American Bar Association, did not admit African American attorneys. Throughout its history, the NBA has advocated consistently on behalf of African Americans and other minority populations. The NBA represents approximately 66,000 lawyers, judges, law professors, and law students, and it has over eighty affiliate chapters throughout the world.

The National Center for Lesbian Rights (NCLR) is a national legal non-profit organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender (LGBT) individuals and their families. Since 1994, NCLR's Immigration Project has provided free legal assistance to thousands of LGBT immigrants nationwide through, among other services, direct representation of LGBT immigrants in impact cases and individual asylum cases and advocacy for immigration and asylum policy reform. NCLR has published papers on the topic of gender and sexual orientation-based violence and discrimination, and has filed briefs, both as amicus and as counsel of record, regarding asylum claims based on rape, domestic violence, and other forms of gender and sexual orientation-based persecution before various federal courts.

National Council of Asian Pacific Americans (NCAPA) is a coalition of 34 national Asian Pacific American organizations around the country. Based in Washington, D.C., NCAPA serves to represent the interests of the greater Asian American (AA) and Native Hawaiian Pacific Islander (NHPI) communities and to provide a national voice for the communities' concerns. Asian Americans are part of this country's rich immigration history. Nearly two-thirds of Asian Americans are foreign-born, and since 2010, more immigrants are from Asian countries than of any other origin. NCAPA rejects enforcement-only approaches to immigration, including proposals and initiatives that scapegoat immigrants and separate families.

The National Council of Jewish Women (NCJW) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, chil-

dren, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for "[c]omprehensive, humane, and equitable immigration, refugee, asylum, and naturalization laws, policies, and practices that facilitate and expedite legal status and a path to citizenship for more individuals." Consistent with its Principles and Resolutions, NCJW joins this brief.

National Council of La Raza (NCLR) is the largest national Hispanic civil rights and advocacy organization in the United States. NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective on key issue areas, and has a long history of fighting for civil rights at the federal and state levels. NCLR's Affiliate Network of nearly 300 community-based organizations—operating in 37 states and the District of Columbia—provides education, healthcare, housing, workforce development, immigration, and other services to millions of Americans and immigrants annually. NCLR believes that family unity is a national value and interest that strengthens the country.

The National Employment Law Project (NELP) is a non-profit legal and research organization that has for more than 45 years advocated for the employment and labor rights of low-wage, unemployed, and immigrant workers. NELP seeks to ensure that all workers, and especially the most vulnerable ones, receive the full protection of labor laws, and that employers are not rewarded for skirting those basic rights. NELP's areas of expertise include the workplace rights of immigrants, and NELP has testified in Congress regarding these matters and has litigated directly and participated as amicus in numerous cases before the federal courts of appeals and the United States Supreme

Court. A holding against the right of immigrants to a full understanding of their rights and the deportation repercussions of a given action is contrary to the fundamental principles of the United States and harms all immigrants, as well as the communities where they live and work.

National Immigrant Justice Center (NIJC), a program of the Heartland Alliance for Human Needs and Human Rights, is a non-profit organization accredited by the Board of Immigration Appeals since 1980 to provide immigration assistance. NIJC provides free and low-cost legal services to approximately 8,000 noncitizens per year, and represents hundreds of noncitizens who are placed into removal proceedings as a result of guilty pleas in state criminal courts. NIJC also offers no-cost training and consultation to criminal defense attorneys representing noncitizens, to train and advise regarding the immigration consequences of particular convictions.

National Justice for Our Neighbors is a network of immigration legal service organizations across the country. Together it operates more than fifty free or low-cost legal clinics serviced by thirty-four immigration attorneys, and engages in advocacy and education that promote immigrant rights. It understands the sweeping effects of a criminal conviction and the life-altering consequences of deportation for its clients.

The National Korean American Service and Education Consortium (NAKASEC) was founded as a consortium in 1994 by local community centers who realized that only by coming together can Korean and Asian Americans build and contribute to a national movement for civil rights. Its mission is to organize Korean and Asian Americans to achieve racial, economic, and social

justice. One of its signature organizing and advocacy issue areas is immigrant rights and keeping immigrant families together.

The National LGBT Bar Association (LGBT Bar) is a non-partisan, membership-based professional association of lawyers, judges, legal academics, law students and affiliated lesbian, gay, bisexual and transgender legal organizations. The LGBT Bar promotes justice in and through the legal profession for the LGBT community in all its diversity. This case stands to impact the LGBT Bar's membership both professionally and personally. As a group of both legal professionals and individuals with diverse backgrounds, the LGBT Bar acknowledges the effect this case will have not only on its immigration attorneys, but also on the families of its members, and therefore finds it necessary to vocalize its support of the petitioner.

The National Tongan American Society (NTAS) serves the Tongan community in Utah and throughout the United States. There have been families separated in Utah due to the types of deportations at issue in this case. NTAS seeks to keep its families together with better and fair treatment of legal cases of immigrants.

The Neighborhood Defender Service of Harlem (NDS) was founded in 1990 to represent residents of Northern Manhattan facing charges in New York County criminal courts. It represents 10,000 clients in criminal court annually, including a significant number of noncitizens requiring specific advice about the immigration consequences of criminal pleas and other dispositions. Its immigration attorneys also represent noncitizen individuals in deportation and other immigration-related proceedings. NDS advocates also represent parents facing abuse and neglect charges in New

York City family court. NDS has a significant interest in the remedies available to noncitizens who are ensnared in the criminal justice system.

NETWORK Lobby for Catholic Social Justice educates, organizes, and lobbies for social and economic transformation. Founded by Catholic Sisters in the progressive spirit of Vatican II, it is rooted in Catholic Social Justice tradition and open to all who share its passion. The NETWORK community of justice-seekers is more than 50,000 strong with members in every state and every congressional district.

The New York Legal Assistance Group (NYLAG) is a not-for-profit law office that provides free civil legal services to low-income New Yorkers who cannot afford private attorneys. NYLAG provides legal assistance in New York City in the areas of government benefits, family law, immigration, disability rights, housing law, special education, and consumer debt, among others. NYLAG's Immigrant Protection Unit (IPU) provides New York's low-income immigrant communities with comprehensive legal services through consultation and direct representation. IPU assists individuals in securing or continuing lawful status in the United States through adjustment of status and other complex legal remedies that may be available to them. IPU also aims to facilitate family reunification through family-based immigrant petitions, humanitarian parole and other forms of relief. As one of the largest immigrant services providers in the State of New York, IPU educates immigrant communities about the dangers of fraudulent immigration law practitioners and other barriers to attaining citizenship. Through its comprehensive approach, IPU seeks to broaden and improve access to quality legal representation and address the social welfare needs of New York's low-income immi-

grant community. NYLAG's Special Litigation Unit enforces the rights of immigrants in class action cases. As an organization that represents immigrants in removal proceedings, including immigrants who have taken criminal pleas, NYLAG and its clients have a strong interest in seeing the Petitioner's rights vindicated.

Northwest Immigrant Rights Project (NWIRP) is a nationally-recognized legal services organization based in Washington State. Each year, NWIRP provides direct legal assistance in immigration matters to over 9,000 low-income people from over 150 countries, speaking over 60 different languages and dialects. NWIRP also strives to achieve systemic change to policies and practices affecting immigrants through impact litigation, public policy work, and community education. Founded in 1984, NWIRP serves the community from four offices in Washington State in Seattle, Granger, Tacoma, and Wenatchee. NWIRP is the only organization on the List of Pro Bono Legal Service Providers for Washington State that is distributed to unrepresented individuals facing removal proceedings by the local immigration court. NWIRP has a deep interest in the subject of this litigation because it provides legal assistance each year to thousands of individuals facing removal proceedings.

OCA–Asian Pacific American Advocates (OCA) is a national, membership-driven organization dedicated to advancing the social, political, and economic wellbeing of Asian Pacific Americans. Through its 100 chapters and affiliates across the nation, OCA engages in policy advocacy, community organizing, and programming to advance the civil rights of Asian Pacific Americans, including immigrant rights and immigrant integration.

The Service Employees International Union (SEIU) is an international labor organization representing approximately two million working men and women in the United States and Canada employed in the private and public sectors. Many of SEIU's members are foreign-born U.S. citizens, lawful permanent residents, or immigrants authorized to work in the United States. Many of SEIU's members have mixed-status families.

South Asian Americans Leading Together (SAALT) is a national, nonpartisan, non-profit organization that fights for racial justice and advocates for the civil rights of all South Asians in the United States. Its ultimate vision is dignity and full inclusion for all. SAALT is the only national, staffed South Asian organization that advocates for South Asian communities through a social justice framework. SAALT has been a national voice in addressing immigrant rights. The South Asian community includes many who are non-citizens and vulnerable to prejudicial and discriminatory practices within the judicial system that may result in mandatory deportation without fair due process. SAALT and its colleagues who join this brief believe that non-citizen defendants should have accurate legal advice about deportation consequences. SAALT stands with the Petitioner in the pursuit of protecting the rights of immigrants and their families.

The South Asian Bar Association of North America represents the lawyers, law students, judges and legal academics with their roots in South Asia. It provides a vital link for the South Asian community to the law and the legal system. Because its membership is composed primarily of immigrants and the children of immigrants, it has a special interest in protecting the rights

of those communities and in promoting outcomes policies that take their special circumstances into account.

The Southeast Asia Resource Action Center (SEARAC) is a national organization that advances the interests of Cambodian, Laotian, and Vietnamese American communities who came to this country as the largest group of refugees ever resettled in the United States. Due to challenges upon initial resettlement, SEARAC's communities have historically struggled with high rates of poverty, post-traumatic stress disorder, and poor educational outcomes, funneling many young people into the prison-to-deportation pipeline. SEARAC has been an outspoken advocate in the movement to end unjust, mandatory detention and deportation. SEARAC strongly believes in a judicial system that ensures due process for all immigrants and refugees, and joins its colleagues in this amicus brief in support of stronger legal protections for the most marginalized communities.

The Texas Civil Rights Project (TCRP) uses legal advocacy to empower communities and create policy change in Texas. In its twenty-five-year history, TCRP has brought thousands of strategic lawsuits, defending voting rights, fighting institutional discrimination, and reforming systems of criminal justice. TCRP's efforts have helped countless low-income and historically marginalized Texans, including immigrant families. Recently, for example, TCRP settled a lawsuit against the State of Texas for refusing to issue birth certificates to babies born in Texas to undocumented mothers, representing dozens of immigrant families from the Rio Grande Valley and the organization La Unión del Pueblo Entero, and working with Texas Rio Grande Legal Aid. Without birth certificates, families lived in constant fear of separation and

could not receive access to basic education, health, religious and childcare services. Given TCRP's history, mission and dedication to advancing equality and justice, TCRP has a strong interest in seeing the Petitioner's rights vindicated for his own benefit and for that of millions of immigrants and their families throughout the country.

United Food and Commercial Workers International Union, AFL-CIO, CLC (UFCW) is an unincorporated association and labor organization representing approximately 1.3 million workers. UFCW is composed of members, local unions, and other chartered bodies throughout the United States. UFCW represents immigrants from many nations, including noncitizens. UFCW members work primarily in retail, meatpacking, food processing, and poultry. UFCW believes that immigrants charged with crimes may face harsher consequences following a felony conviction because certain sentences result not only in prison but also deportation which separates families. In such circumstances, ineffective assistance of counsel has heightened consequences when erroneous legal advice as to whether to accept a plea leads to deportation.